

**ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU**



Advisory Opinion No. 296

This is an advisory opinion in response to your letter requesting advice from the Ethics Commission as to whether the City may award a competitively-bid concession contract to a business in which a City employee serves as a member of the Board of Directors.

The Commission understands the facts relative to your inquiry to be as follows:

You are the Purchasing Administrator for the City's Department of Budget and Fiscal Services [BFS]. In that capacity, you are in the process of awarding one (1) new beach services concession contract at K_hi_Beach to a non-profit beachboy association.

A City employee ("A") serves as a member of the Board of Directors of a beachboys club ("XYZ"), a non-profit association. XYZ was the high bidder of two organizations competing for the contract.

A serves in another division of BFS. A has continuously had the same job title in that division since commencing City employment in 1990. In that position A has been assigned to the old P_wa'a Annex and to the K_ne'ohe Satellite City Hall at various times, but A has never worked at City Hall, where the Division of Purchasing is located.

There was no communication by the Division of Purchasing with A about this concession contract at any stage of the process. Furthermore, advertisement for this contract occurred on the following days: September 24, 26, and 28, 1998. Prospective bidders were required to submit to BFS a written indication of their intent to bid by October 9, 1998. On that date, A went on what has become extended sick leave. A has not yet returned to work for the City.

The ethical question presented is whether a non-profit company in which a City employee serves on the Board of Directors can be awarded a competitively-bid City contract.

The general rule in relation to your question is found in the Revised Ordinances of Honolulu 1990 [ROH], Section 3-8.2(e), which states in pertinent part:

No officer or employee of the city...shall [e]nter into any contract in behalf of the city with an officer or employee or with a business in which an officer or employee has a controlling or substantial financial interest, involving the furnishing of services, materials, supplies and equipment **unless the contract is made after competitive bidding**....(emphasis added)

Under the definitions found in ROH, Section 3-8.1, "Financial interest" means an interest held by an individual...which is...a directorship or officership in a business." In that same set of definitions,

"Business" means and includes (1) a corporation; (2) a partnership; (3) a sole proprietorship; (4) institutions; (5) trusts; (6) foundations; or (7) any other

individual or organization carrying on a business, **whether or not operated for profit** (emphasis added).

Based on the evidence presented, the Commission finds that the City may award this competitively-bid concession contract to XYZ in which a City employee serves on the Board of Directors.

Dated: December 7, 1998

FAY M. UYEMA
Chair, Ethics Commission

